

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RYAN GENE CARTER,

Petitioner,

vs.

ROBERT LEGRAND, *et al.*,

Respondents.

Case No. 3:14-cv-00040-RCJ-VPC

**ORDER**

Before the court is petitioner's amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF #10). The court has reviewed the petition pursuant to Habeas Rule 4, and the petition shall be docketed and served.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Also before the court is petitioner's motion for the appointment of counsel (ECF #9). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision

1 to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986),  
2 cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469  
3 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that  
4 denial of counsel would amount to a denial of due process, and where the petitioner is a person of such  
5 limited education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see*  
6 *also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). The petition on file in this action appears  
7 sufficiently clear in presenting the issues that petitioner wishes to raise, and the legal issues do not  
8 appear to be particularly complex; therefore, counsel is not justified. Petitioner's motion is denied.

9 **IT THEREFORE IS ORDERED** that the Clerk shall **ELECTRONICALLY SERVE** the  
10 amended petition (ECF #10) on the respondents.


11 **IT FURTHER IS ORDERED** that respondents shall file a response to the petition, including  
12 potentially by motion to dismiss, within **ninety (90) days** of service of the petition, with any requests  
13 for relief by petitioner by motion otherwise being subject to the normal briefing schedule under the local  
14 rules. **Any response filed shall comply with the remaining provisions below, which are entered**  
15 **pursuant to Habeas Rule 4.**

16 **IT FURTHER IS ORDERED** that any procedural defenses raised by respondents in this case  
17 shall be raised together in a single consolidated motion to dismiss. In other words, the court does not  
18 wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple successive  
19 motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to  
20 dismiss will be subject to potential waiver. Respondents shall not file a response in this case that  
21 consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28  
22 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek  
23 dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to  
24 dismiss **not** in the answer; and (b) they shall specifically direct their argument to the standard for  
25 dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In  
26 short, no procedural defenses, including exhaustion, shall be included with the merits in an answer. All  
27 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

**IT FURTHER IS ORDERED** that petitioner shall have **thirty (30) days** from service of the answer, motion to dismiss, or other response to file a reply or opposition, with any other requests for relief by respondents by motion otherwise being subject to the normal briefing schedule under the local rules.

**IT FURTHER IS ORDERED** that petitioner's motion for appointment of counsel (ECF #9) is **DENIED**.

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UNITED STATES DISTRICT JUDGE